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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Special Committee decision of 14 June 2007 concerning Puerto Rico

Report prepared by the Rapporteur of the Special Committee, Bashar Ja'afari (Syrian Arab Republic)

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I. Introduction

1. At its 6th meeting, on 14 June 2007, the Special Committee adopted draft resolution A/AC.109/2007/L.7 on the question of the Special Committee decision of 12 June 2006 concerning Puerto Rico. In paragraph 11 of the resolution, the Special Committee requested the Rapporteur to submit a report to it in 2008 on the implementation of the resolution. The present report was prepared by the Rapporteur of the Special Committee in compliance with that request. It considers Puerto Rico in the light of previous reports prepared by the Rapporteur, recent political and military developments in Puerto Rico and action taken by United Nations bodies on the matter.

II. Background information

A. General

2. Puerto Rico[1] is the most easterly and smallest island of the Greater Antilles, in the Caribbean Sea. It has a land area of 8,959 square kilometres, including the small nearby islands of Vieques, Culebra and Mona. More than three fourths of Puerto Rico is mountainous and the range that runs its length reaches an elevation of 1,338 metres at its highest point.

3. According to 2007 estimates, the population, which is primarily Spanish speaking, is around 3.95 million, although a certain number of Puerto Ricans also speak English. According to United States census estimates, Puerto Rico's rate of population growth averaged 0.7 per cent over the years from 2000 to 2005; the estimated 2007 population growth rate was 0.393 per cent.[1] Over the past four decades, the island's demography has been transformed from that of a traditional agrarian society into that of an industrial society, with population growth slowing and life expectancy rising sharply. Part of the slowdown in population growth has been the result of emigration of some 500,000 Puerto Ricans to the United States of America, in particular during the 1950s and 1960s. At present the Puerto Rican population in the United States mainland is slightly higher than in Puerto Rico.[2]

4. United States citizenship is granted to people born in Puerto Rico. They do not have the right to vote in United States presidential or congressional elections unless they reside on the United States mainland. In addition, the Supreme Court of Puerto Rico has recognized the existence of Puerto Rican citizenship in a court decision. Subsequently, the Puerto Rican Department of State certified such citizenship, which Puerto Ricans may claim through a protocol established by the Puerto Rican Department of State. Under the current Commonwealth arrangements, authority over defence, international relations, external trade and monetary matters remains with the United States, while Puerto Rico has autonomy on tax matters, social policies and most local affairs. The main political parties in the Territory differentiate themselves mostly by their position on the ultimate political status of Puerto Rico, none being satisfied with the status quo. The Partido Popular Democrático (PPD) favours an enhanced Commonwealth status, which would be

[1] www.cia.gov/cia/publications/factbook, see Puerto Rico.

[2] Department of Federal Affairs of the Government of Puerto Rico and Angelo Falcon of the Puerto Rico Policy Institute, 2006.

non-territorial and non-colonial. United States citizenship would be retained but Puerto Rico would have greater governmental authority over its own affairs and more latitude to establish regional and international relations. The Partido Nuevo Progresista (PNP) favours Puerto Rico becoming a fully integrated state of the United States. Support for PPD remains slightly higher than for PNP. The third party, the Partido Independentista Puertorriqueño (PIP), favours independence for the island.[3]

B. Constitutional and political status

5. Puerto Rico currently holds commonwealth status with the United States. The 1952 Constitution of the Commonwealth of Puerto Rico is described in detail in paragraphs 91 to 119 of the report of the Rapporteur of the Special Committee of 1974 (A/AC.109/L.976). In brief, the Government consists of: (a) a Governor elected for four years at each general election; (b) a Legislative Assembly comprising two houses, the Senate (27 members) and the House of Representatives (51 members elected by direct vote of the adult population at each general election); and (c) a Supreme Court and lower courts. The United States Federal Court extends its jurisdiction to Puerto Rico. Puerto Rico is represented in the Government of the United States by a Resident Commissioner, who is a non-voting member of the United States House of Representatives, but a voting member of any committees on which he or she sits. Although Puerto Rico has its own courts, its legal system is integrated into the United States federal judicial system via the First Circuit Court of Appeals. United States federal law prevails over local law.

6. Even after the establishment of a constitutional Government for Puerto Rico in 1952, United States congressional authority over Puerto Rico remained unaltered. The United States Congress is vested with plenary power over Puerto Rico, while the island is vested with local authority over designated areas. All laws concerning the Territory's relations with the United States remained in force through the Federal Relations Act (see A/AC.109/L.976, paras. 120-132), under which Puerto Rico was brought within the trade, tariff and monetary systems of the United States. The United States also undertook responsibility for the defence of Puerto Rico. In 1958 Puerto Rico's Legislative Assembly requested changes in the Federal Relations Act, but these were not enacted. In 1959 three bills requesting changes in the political status of the Territory were submitted to the United States Congress, but no action was taken on any of them.

7. The results of a 1993 plebiscite, with virtually identical options to those offered in a previous plebiscite in 1967, were 48.4 per cent for the status quo (Commonwealth), 46.2 per cent for statehood and 4 per cent for independence. Following this result, the Legislative Assembly of Puerto Rico requested the United States Congress to decide whether the definition of Commonwealth as presented on the ballot was acceptable. Congress replied negatively, arguing that the definition contained expectations that were not viable (see A/AC.109/1999/L.13, paras. 172-180). The Puerto Rican Legislative Assembly then voted to hold another plebiscite in 1998. In February 1997, the Young Bill was introduced in the United States Congress, seeking to make the results of the proposed 1998 plebiscite binding on the United States Government. The bill was adopted by the House of Representatives in

[3] *Economist Intelligence Unit*, Country Report 2006, Puerto Rico, January 2007.

March 1998, by a one vote margin of 209 to 208, but it was not acted upon by the Senate before the end of the Congressional session and thus expired.

8. The organization of the 1998 plebiscite proceeded as scheduled, despite the failure of Congress to bind the United States Government to the results. There was, however, much controversy regarding the wording of the ballot choices. The pro-Commonwealth PPD protested that the ballots, as drafted, misrepresented the Commonwealth status and deliberately sought to confuse its supporters by including another option, "Free association", the definition of which was very similar to that given for "Commonwealth status". As a result of an opinion of the Supreme Court of Puerto Rico, the fifth option, "None of the above" was included on the ballot, and PPD encouraged its supporters to choose that option. The results of the plebiscite held on 13 December 1998 were as follows: 50.4 per cent for "None of the above"; 46.7 per cent for statehood; 2.3 per cent for independence; 0.3 per cent for free association; and 0.06 per cent for Commonwealth.

9. After the 1998 plebiscite, the then President of the United States, William J. Clinton, stated that he would work with Congress and leaders in Puerto Rico to clarify the status issue. He then established the President's Task Force on Puerto Rico's Status. On 5 December 2003, the White House named the 16 members of the Task Force. At the same time, the President, George W. Bush, amended President Clinton's Executive Order to require the Task Force to report on the progress made every two years instead of annually. In announcing the membership of the Task Force, a White House news release said that the Task Force "would seek to implement the policy set forth under President Clinton's order". Leaders of both the pro-Commonwealth PPD and the pro-independence PIP have said that the move did not indicate any serious intention on the part of President Bush to take action on the political status of Puerto Rico in the near future, while the pro-statehood PNP welcomed the announcement as a sign that Washington, D.C., was interested in dealing with the issue after the Puerto Rico and United States elections in November 2004.[4]

10. With respect to the political status of Puerto Rico and its relationship with the United States, the debate was brought to the legislative forefront in April 2002, when both the Senate and the Legislative Assembly of Puerto Rico approved resolutions recommending the establishment of an assembly on the status of the Puerto Rican people as the most viable and appropriate mechanism to determine the island's future status.[5] This recommendation was supported by PPD, by the pro-independence PIP party and by such entities as the Puerto Rican Bar Association. However, it was opposed by PNP, which viewed the proposed mechanism as a futile, unilateral exercise because it did not engage the United States Government from the outset.[6]

11. The outcome of the 2004 general election signalled that the status question would run into a gridlock. The ruling party PPD favours the status quo, whereas PNP, which controls both the Legislature and the post of Resident Commissioner, is

[4] *Economist Intelligence Unit*, Country Report, Puerto Rico, December 2003.
[5] *Economist Intelligence Unit*, Country Report, Puerto Rico, July 2004.
[6] *The San Juan Star*, 8 October 2002.

in favour of full United States statehood. PIP, which is smaller, supports an independent status for the island.[7] The mechanisms by which the two major parties propose to decide the status question are also different. PDP is in favour of a locally created statutory constitutional convention, which would work with the United States Congress to resolve the status question. PNP supports a referendum leading to a plebiscite with status alternatives defined by Congress, which would most likely exclude "commonwealth" as an option.[7]

12. Despite the seeming deadlock, Puerto Rico took significant steps in the process of self-determination throughout 2005. In February, Governor Acevedo Vilá proposed a referendum, to be held on 10 July 2005, whereby voters would have an opportunity to choose one of two proposed mechanisms to advance the status question.[8] The first procedure would be a formal request to the United States Congress to authorize a federally mandated plebiscite in Puerto Rico with the alternatives as defined by Congress. The second option would be the creation of a local Constitutional Assembly on Status selected by the people of Puerto Rico. Despite expectations to the contrary, in March, the Senate approved a bill that authorized the July referendum and included the Constitutional Assembly as a possible way to resolve the political relationship between the United States and Puerto Rico.[9] The bill included an amendment that obliged the House and Senate to pass legislation that would allow the people of Puerto Rico to choose a mechanism to determine status, in case the United States Government did not commit to a process of free determination by 31 December 2006. However, Governor Acevedo Vilá felt that the language of the bill was not strong enough on the option of the Constitutional Assembly and he vetoed the bill on 10 April.[10] In late April 2005, the Legislature approved a resolution that did not require the signature of the Governor, and that petitioned the United States Congress and the President to "respond to the democratic aspirations of the United States citizens of Puerto Rico" and enable them to choose a fully democratic form of government.[11] PDP lawmakers did not support that resolution. Intense discussions continued on the merits of a Constitutional Assembly versus direct vote as mechanisms to move the process of self-determination forward in Puerto Rico.

13. In its December 2005 report, the President's Task Force on Puerto Rico's Status stated that, while the current territorial status might continue so long as Congress desired, there were only two non-territorial options recognized by the United States Constitution, namely, statehood within the United States or full independence. It found that the democratic will of the Puerto Rican people was paramount in the matter of Puerto Rico's status, in order to provide clear guidance for future action by the United States Congress. The Task Force envisaged a two-stage process to approach the issue.[12] It first recommended that a "federally sanctioned plebiscite" take place in 2006 to ascertain whether the people of Puerto Rico "wish to remain a United States territory subject to the will of Congress or to pursue a constitutionally viable path towards a permanent non-territorial status with

[7] *The Puerto Rico Herald*, 13 January 2005.

[8] The Puerto Rico Federal Affairs Administration, 11 February 2005.

[9] *The Puerto Rico Herald*, 31 March 2005.

[10] *The Puerto Rico Herald*, 11 April 2005.

[11] Congressional Research Service, "Political status of Puerto Rico: Background, options and issues in the 109th Congress", 25 May 2005.

[12] Report by the President's Task Force on Puerto Rico's Status, December 2005.

the United States". The Task Force then recommended that, if the voters chose to change the current territorial status, an additional referendum should allow them to decide between statehood and independence. If, on the other hand, the voters elected to maintain the current territorial status, the Task Force recommended that plebiscites be held periodically to "keep Congress informed of the people's wishes". During his statement before the Committee on Resources in the United States House of Representatives on 27 April 2006, C. Kevin Marshall, Deputy Assistant Attorney General, co-chair of the Task Force, said that the "New Commonwealth" option suggested by Governor Anibal Acevedo Vilá was not "consistent with the Constitution". In the same month, the Governor criticized the proposal as undemocratic.[13] In a letter addressed to the Task Force on 23 October 2007, the Governor reaffirmed the Task Force's "denial of future status options other than the traditional statehood and independence", as well as his conviction that the holding of a constitutional convention presented the best way forward.[14]

14. In December 2007, the President's Task Force issued its second report on the question of Puerto Rico's status. Again concluding that there were only three options available under the United States Constitution for the future status of Puerto Rico, namely, continuing as a territory, statehood or independence, the Task Force reiterated the three recommendations it had put forward in its 2005 report.[15]

15. Meanwhile, the United States Congress reopened consideration of Puerto Rico's political status in early 2007, as two pieces of draft legislation aimed at resolving the status issue were debated by the Committee on Natural Resources Subcommittee on Insular Affairs. In March 2007, hearings took place on the two approaches.

16. The "Puerto Rico Democracy Act of 2007" (H.R.900) was introduced in the House of Representatives on 7 February 2007. The bill stated, inter alia, that: "The Puerto Rico State Elections Commission shall conduct a plebiscite in Puerto Rico during the 111th Congress, but not later than December 31, 2009. The ballot shall provide for voters to choose only between the following two options: (1) Puerto Rico should continue the existing form of territorial status as defined by the Constitution, basic laws, and policies of the United States. (2) Puerto Rico should pursue a path toward a constitutionally viable permanent non-territorial status."

17. A second draft bill, cited as the "Puerto Rico Self-Determination Act of 2007" (H.R.1230), was introduced in the House of Representatives on 28 February 2007, recognizing the right of the people of Puerto Rico to call a constitutional convention through which the people would exercise their natural right to self-determination and to establish a mechanism for congressional consideration of such decision. The Constitutional Assembly is a procedural mechanism for the decolonization of Puerto Rico, which has gained ground on the island in recent years. According to media reports, this mechanism has been supported by the Puerto Rico Bar Association.

18. On 25 October 2007, after the introduction of an amendment aimed at reconciling the differing approaches, the Puerto Rico Democracy Act of 2007 (H.R.900) was passed in Subcommittee. As of the writing of the present report, the bill had not yet been introduced in the United States Senate. The bill would provide

[13] www.washingtontimes.com, 30 April 2006.

[14] Text of letter retrieved via www.fortaleza.gobierno.pr/admin_fortaleza/sistema/noticias/1160.doc.

[15] Report by the President's Task Force on Puerto Rico's Status, December 2007.

for a referendum to be held no later than 31 December 2009 giving Puerto Ricans the choice between retaining their present political status, or choosing a new status. If the former option were to win, a follow-up referendum would be held again every eight years. If the latter option were to win, a separate referendum would be held no later than 31 December 2011, when Puerto Ricans would be given the option of being admitted as a State of the Union, "on equal footing with the other States", or becoming a "sovereign nation, either fully independent from or in free association with the United States". If the people of Puerto Rico were to choose statehood, independence, or free association, the United States Congress would have six months to act on that choice.[16]

III. Recent developments

A. Political

19. The report contained in A/AC.109/2007/L.3 gave a detailed account of the last general election in Puerto Rico held in November 2004, in which Aníbal Acevedo Vilá was elected governor by a small margin. PNP won control of the legislature from PPD, taking 18 seats in the 27-member Senate and 32 in the 51-member House of Representatives. The independence party, PIP, kept its one seat in each chamber. The next general election in Puerto Rico will be held next November 2008.

20. The Government of the United States had initiated a criminal investigation against the Governor of Puerto Rico in 2003, charging him and associates for violations of minor electoral funds regulations. In January 2008, a Federal Grand Jury (a secret proceeding of the United States District Court) returned a criminal indictment against Governor Aníbal Acevedo Vilá and 12 associates, arresting them in March 2008.

21. The indictments and prosecution of the Governor occur in the midst of the upcoming gubernatorial elections, when the main challenger is the United States Republican party activist and statehood supporter Luis Fortuño, currently the Resident Commissioner of Puerto Rico in the United States House of Representatives.

22. The Federal indictment of Governor Aníbal Acevedo Vilá has led to concern among some in Puerto Rico regarding intensification of intervention by the United States Federal District Court and the Federal Bureau of Investigation (FBI) in Puerto Rico.

23. An Assembly of the Popular Democratic Party held on 27 April 2008 ratified the candidature of Aníbal Acevedo Vilá in the November 2008 gubernatorial elections.[17]

24. In July 2005, a vote was held whereby 84 per cent of voters opted in favour of a unicameral legislature for Puerto Rico. Although only 22 per cent of registered voters participated in that referendum, the results triggered a process whereby another referendum was to be held in 2007 to potentially amend Puerto Rico's

[16] Wikipedia, Puerto Rico Democracy Act of 2007, accessed on 19 March 2008.

[17] *El Vocero* newspaper, 29 April 2008.

Constitution and establish a one-house system in 2009.[18] However, on 29 June 2007, the Supreme Court of Puerto Rico ruled that it could not force the Legislative Assembly to initiate a constitutional amendment process to establish a unicameral legislative system.[19]

25. In August 2005, the United States Court of Appeals for the First Circuit, in Boston, upheld the position that citizens of Puerto Rico do not have the right to vote in the United States presidential elections. The Court reasoned that Puerto Rico was not a State and it therefore could not have any voting members in the electoral college. The Court has rejected such a claim on three previous occasions.[20] An appeal filed in the United States Supreme Court was turned down in March 2006. Although the Supreme Court action was taken without comment, the United States Government's top Supreme Court lawyer said in a filing that the Appeals Court decision "is amply supported by constitutional text, unbroken tradition and uniform precedent".[21]

26. As described in previous reports, apart from general political questions, three specific issues have been raised before the Special Committee in recent years as resulting from the particular political status of Puerto Rico and its relationship with the United States: (a) the United States military presence in Puerto Rico, particularly on the island of Vieques; (b) the imprisonment in the United States of pro-independence Puerto Ricans accused of seditious conspiracy and weapons possession; and (c) the application of the death penalty to Puerto Ricans convicted on federal charges. In recent years, the issue of increased political persecution has been raised.

27. As in previous reports, the issue of the United States military presence in Puerto Rico will be dealt with in the section on military developments.

28. The issue of the Puerto Ricans accused of seditious conspiracy and weapons possession and imprisoned in the United States for more than 25 years has also been covered in previous reports. In essence, a number of Puerto Rican organizations and political and civil leaders have claimed over the years that these were essentially political prisoners and that they received disproportionately long sentences. In August 1999, President Clinton offered to release the prisoners conditionally, if they formally renounced violence. This offer was accepted by 11 of the original 15 prisoners, while one accepted a deal whereby he would be set free in five years. Supporters of those who were released noted that the conditions also included tight controls over their actions and statements, effectively preventing them from continuing to advocate independence for Puerto Rico. During 2002, two more of the original 15 prisoners were released[22] (although one, Antonio Camacho Negrón, was rearrested in August 2006 by the Federal Bureau of Investigation (FBI)). The two remaining prisoners, Oscar López Rivera and Carlos Alberto Torres, are scheduled to leave prison in 2027 and 2024, respectively. In July 2004, the Human Rights Committee began a campaign to petition President Bush for the release of López Rivera and Torres. Haydée Beltrán, who is serving an 80-year sentence, elected to

[18] *The Puerto Rico Herald*, 11 July 2005.

[19] www.eleccionespuertorico.org/referencia/referendum2007_en.html, accessed on 19 March 2008.

[20] *The New York Times*, 5 August 2005.

[21] CNN, 20 March 2006, www.cnn.com; BBC News, 21 March 2006, www.bbc.co.uk.

[22] www.boricuanacional.org.

pursue her cause separately from the group of 15.[23] According to Puerto Rican media, there is a consensus among the people of Puerto Rico in favour of the release of those imprisoned for cases related to the struggle for the independence of Puerto Rico. In late 2007, the Senate of Puerto Rico adopted a resolution in favour of the release of the prisoners.

29. On 23 September 2005, FBI agents shot and killed Filiberto Ojeda Ríos, Ojeda one of Puerto Rico's most controversial figures, who in 1976 founded Los Macheteros, more formally known as the Boricua People's Army. The group was an underground paramilitary organization dedicated to freeing Puerto Rico from American "colonial" rule. Throughout his time with the group, Ojeda Ríos was implicated in a number of criminal activities including the 1983 raid on a Wells Fargo depot in West Hartford, Connecticut, from which $7.2 million was stolen. Ojeda Ríos jumped bail in 1990 while awaiting trial for the robbery. In 1992, he was convicted in absentia and sentenced to 55 years in prison. On 20 September 2005, FBI agents surrounded the house where Ojeda Ríos was hiding in Hormigueros, Puerto Rico. Ojeda Ríos was injured following a shoot-out on 23 September, a date of historical significance to the pro-independence supporters. Autopsy results indicated that he bled to death after being hit by a single bullet. The circumstances of his death stirred controversy and prompted officials in Puerto Rico and the United States, including Governor Acevedo Vilá, Resident Commissioner Fortuño and three Puerto Rican members of the United States Congress, to call for an independent investigation of FBI actions.[24] The overall perception of the death of Ojeda Ríos in Puerto Rico is that he was allowed to bleed to death. The media in Puerto Rico has reported that persecution of independence supporters has increased. Meanwhile, concern continued to be expressed by many sectors of the Puerto Rican population regarding FBI actions in Puerto Rico, which many saw as unfairly targeting pro-independence activists.[25] In August 2006, a report issued by the United States Department of Justice concluded that "[it] did not find that the FBI violated the deadly force policy or intentionally allowed Ojeda to die, [but] did find deficiencies in the FBI's conduct of the arrest operation". While the report was dismissed by some independence advocates as a cover-up, local reaction to the report was relatively subdued compared to the demonstrations that had erupted across the island in September 2005 when Ojeda Ríos was killed.[26]

30. After the death of freedom-fighter Filiberto Ojeda Ríos, the Government of Puerto Rico filed litigation against the Government of the United States in the United States District Court in Puerto Rico regarding its investigation as to the circumstances of his death. The United States District Court in Puerto Rico dismissed a petition by the Puerto Rico Department of Justice regarding the cooperation of the FBI. The United States Supreme Court eventually upheld the said dismissal.

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[23] *The Puerto Rico Herald*, 29 July 2004.

[24] *The Economist*, 29 September 2005; *The Nation*, 24 October 2005; *The New York Times*, 28 September 2005; *The Washington Post*, 29 September 2005; www.democracynow.com, 26 September 2005; Letter to the FBI Director from Representatives José E. Serrano (D-NY), Nydia Velázquez (D-NY) and Luis Gutiérrez (D-IL), 26 September 2005, www.preb.com.

[25] *The Miami Herald*, 27 March 2006.

[26] CNN World News, 9 August 2006, http://www.cnn.com/2006/WORLD/americas/08/09/shooting.death/index.html.

31. On 10 April 2008 the Government of Puerto Rico, through its Department of Justice, publicly denounced the obstruction of its investigation regarding the circumstances surrounding the death of Filiberto Ojeda Ríos.[27] The Secretary of Justice issued a report and declared the investigation closed due to lack of cooperation from the FBI, which refused to release evidence without which charges could not be brought.

32. In March 2008, independence advocate Avelino González Claudio was arrested in Puerto Rico in connection with the Macheteros investigation and was being held without bail.

33. The issue of the application of the death penalty to Puerto Ricans convicted of crimes was described in detail in paragraph 23 of the 2000 report (A/AC.109/2000/L.3). Despite the fact that the death penalty is prohibited in Puerto Rico, the United States Department of Justice has sought the death penalty for Puerto Ricans in a number of cases, resulting in one of the highest death penalty rates per capita of any state or Territory within the United States. The Puerto Rico Supreme Court ruled in 2000 that the death penalty violated the Puerto Rican Constitution, but a year later, the United States Circuit of Appeals in Boston overturned the ruling, saying Puerto Rico was subject to federal law (see para. 5 above). The United States Supreme Court upheld the decision.

34. Popular opinion in Puerto Rico is strongly against the death penalty and a coalition of religious and community organizations and political leaders have vowed to continue fighting attempts to impose capital punishment on the island. In late January 2008, the Secretary of Justice of Puerto Rico, Roberto Sánchez Ramos, and representatives of the Puerto Rican Coalition Against the Death Penalty held a joint press conference to announce a series of decisions aimed at forcing down the number of Puerto Ricans at risk of execution in United States federal cases. The target of their argument is that while the Commonwealth of Puerto Rico has its own Constitution and laws which prohibit the death penalty, they are currently subordinated to the United States federal legislation. The announcement stated that the Puerto Rican Department of Justice had pledged to undertake local, rather than federal, prosecution of cases whenever possible; the Department would transfer cases to a federal court only if it guaranteed that it would not seek the death penalty; it would ask all states requesting the extradition of a suspect for a capital case to "desist", although extradition could be refused; and finally, the Justice Secretary would write a letter to "express his opposition" every time a Puerto Rican citizen faced the death penalty in another jurisdiction. The latter measure had already been put in practice, in a case involving a death sentence meted out to a Puerto Rican citizen by the State of Pennsylvania.[28]

B. Military

35. As has been described in previous reports, for many years Puerto Rico has held an important military-strategic position within the United States Southern Command. In addition to its other military operations in Puerto Rico, from 1941 to

[27] *El Vocero*, 11 April 2008.

[28] World Coalition against the Death Penalty website, 5 March 2008, http://www.worldcoalition.org/modules/smartsection/item.php?itemid=263.

1 May 2003 the United States Navy operated on Vieques, an island of 9,500 inhabitants located eight miles off the east coast of Puerto Rico. Vieques was used for naval gunfire support, air-to-ground ordnance training and amphibious assault exercises. Details of the military exercises conducted on Vieques during the period that the Navy owned part of the island and of the related civil disobedience campaigns, arrests and lawsuits are to be found in previous reports of the Special Committee (A/AC.109/1999/L.13, paras. 18-22, A/AC.109/2000/L.3, paras. 24-30, A/AC.109/2001/L.3, paras. 29-38, and A/AC.109/2002/L.4, paras. 27-36). According to a news release following the cessation of the military operations, the Department of the Navy retained responsibility for the environmental clean-up of the property and would demolish and remove all facilities and structures in the area. (See A/AC.109/2005/L.3, paras. 27-29, for more details on the process leading up to the withdrawal of the United States Navy from Vieques.)

36. Following the withdrawal of the Navy from Vieques, three related issues remained to be clarified: (a) the future development of Vieques and its environmental clean-up; (b) definitive conclusions regarding the effects of the military exercises on the health of Vieques residents; and (c) the future of the Roosevelt Roads Naval Station on the main island of Puerto Rico.

37. Regarding the development of Vieques, in 2002 the Puerto Rican Government announced a four-year plan to invest more than $50 million for infrastructure and job creation schemes, within the Renacer Viequense programme.[29] In January 2005, the Government of Puerto Rico released a master plan for sustainable development of Vieques and Culebra. The plan called for low-impact development on the islands and recommended that they adopt a policy of encouraging ecotourism, which would emphasize the natural attractions of the islands.

38. Vieques has been sectioned off for the purpose of clean-up activities. The western side was transferred to the United States Department of the Interior, the municipality of Vieques and the Puerto Rico Conservation Trust, while the eastern part was transferred to the Fish and Wildlife Service of the Department of the Interior, to be added to the current Vieques National Wildlife Refuge.[30]

39. With regard to the Vieques clean-up, on 9 May 2003, the office of the Puerto Rico Resident Commissioner announced that the Armed Services Committee of the United States Senate had approved an amendment ordering the Navy, in cooperation with the Department of the Interior and the Environmental Protection Agency, to undertake a clean-up project of the land in Vieques that had been transferred to the Department of the Interior.

40. On 5 January 2004, the Environmental Protection Agency (EPA) announced the beginning of the investigation of areas of eastern Vieques under the Resource Conservation and Recovery Act. As part of this investigation, contractors working for the United States Navy took samples of surface and subsurface soil and groundwater from 10 newly installed wells. EPA, in cooperation with the Puerto Rico Environmental Quality Board, provided oversight of the investigation. EPA also collected soil and groundwater samples and conducted independent analyses. On 13 August 2004, the Agency proposed that former Navy sites on Vieques and old Army sites on the island of Culebra be included on the Superfund National Priorities

[29] www.fortaleza.gobierno.pr, 6 June 2002 and 20 October 2002.

[30] Environmental Protection Agency, 1 December 2004, www.epa.gov/region02/vieques/history.

List. EPA announced the formal inclusion of Vieques on the list of the most hazardous waste sites in the United States on 7 February 2005. Shortly thereafter, the Navy announced that it had budgeted $76 million for the clean-up of Vieques for the period of 2006-2009.[31] The Navy spent a total of $17.8 million through the end of 2004 on clean-up activities on Vieques, and estimated that an additional $112 million would be needed from 2005 until completion of the clean-up of both the western and eastern areas of the island.

41. By the end of 2004, the Army had identified 17 potentially contaminated sites on western Vieques. A 2005 clean-up investigation concluded that 9 of the 17 sites required "no further action". According to the Navy report, five of the eight remaining sites exhibited "low levels of contamination and no unacceptable risk identified outside waste sites". The Navy estimated that the total cost of clean-up on western Vieques would be close to $25 million.[32] On the western portion of Vieques, the Navy operated an ammunition facility until 1948, when the facility ceased operations. It was reactivated in 1962 until its final closure in 2001. Later in that year, the Navy transferred 3,100 acres to the Department of the Interior, 4,000 acres to the Municipality of Vieques, and 800 acres to the Puerto Rico Conservation Trust.

42. In eastern Vieques, the Navy identified 20 "waste storage and disposal sites", and 23 other potentially contaminated "areas of concern". The Navy estimated that the total cost of clean-up of eastern Vieques would be close to $106 million.[31] Unexploded ordnance and remnants of exploded ordnance, which contain hazardous substances, have been identified in the former range areas of the eastern portion of the Vieques site, as well as in the surrounding waters. The Navy had managed approximately 14,600 acres on the eastern portion of Vieques, which were used for amphibious training exercises and air-to-ground manoeuvres. This portion of the island included a waste explosive detonation range, which was operated for many years in support of its training activities. Military training on the eastern section of Vieques ceased in 2003 when the Navy transferred that portion to the Department of the Interior.

43. In February 2005, the Vieques Island site was placed on the EPA National Priorities List (NPL), which aims to guide the EPA in determining which sites warrant further investigation. The NPL is a list of the most hazardous waste sites in the country.

44. In June 2007, the United States Navy, in consultation with EPA, the Puerto Rico Environmental Quality Board and the United States Fish and Wildlife Services, developed a community involvement plan to address community concerns and promote public involvement in the clean-up process for eastern Vieques. The plan was made available for public comment until September 2007.

45. On 27 September 2007, EPA announced that it had signed a proposed federal facility inter-agency agreement with the Department of the Navy, the Department of the Interior, and the Government of Puerto Rico itself for the clean-up work on Vieques. The agreement requires that the environmental impacts associated with past and present activities on Vieques be thoroughly investigated and that the

[31] *The Puerto Rico Herald*, 9 February 2005.

[32] Congressional Research Service Report for Congress, "Vieques and Culebra Islands: An analysis of cleanup status and costs", 7 July 2005.

appropriate actions are taken in order to protect the health of the surrounding community and the welfare of the environment. The aim of the agreement is to facilitate cooperation and exchange among all the parties involved. Carlos W. López Freytes, President of the Puerto Rico Environmental Quality Board, described the agreement as "an achievement for the Commonwealth of Puerto Rico because it guarantees the involvement of the Environmental Quality Board, as co-regulators, on the decision-making process of the clean-up".

46. There have been reports of speculation regarding land and property in Vieques, and calls have been made for input by locals to be taken into account by entities involved in the clean-up and development of the island.

47. Culebra Island, which is located about nine miles north of Vieques, was also part of the Navy training facilities. Although military activities ceased on Culebra in 1975 in response to public safety concerns, clean-up of the island has been slow. The lack of activity on Culebra was partly due to legal issues regarding the use of federal funds for clean-up. Once the issue was resolved, the United States Army Corps of Engineers began a limited surface removal of munitions in 1995. In 2004, the Corps spent $4.8 million on the removal of munitions, and the Army expected to spend $2.3 million in 2005.[32] On 3 April 2005, the Puerto Rico Environmental Quality Board announced that the United States Army Corps of Engineers had been awarded a $1.9 million contract to clean up Culebra. The clean-up was to include the removal and disposal of all munitions and explosives in the areas previously designated under the Previously Used Sites for Defence Programme.[33] The Army estimated that an additional $30.1 million would be needed to complete the clean-up and address human health, safety and environmental impacts.[32]

48. The third related issue is the future of the Roosevelt Roads Naval Station, home to the United States Naval Forces Southern Command from 1941 to 31 March 2004. In January 2003, the Commander-in-Chief of the Atlantic Fleet announced that, without Vieques, the Roosevelt Roads facilities would no longer be necessary,[34] and on 24 September 2003, the United States Congress formally approved the closing of the Naval Station. Puerto Rico's Resident Commissioner, who opposed the closing of the naval base and fought to have the land transferred to the territorial Government, said that the Government of Puerto Rico would be able to participate in deciding on future uses of base land and that it would have access to about 40 per cent of the revenues from the sale of lands.[35] On 2 October 2003, President Bush signed the decision to shut down the Roosevelt Roads Naval Base. The base was effectively closed on 30 January 2004. On 31 March 2004, its status was changed from that of a United States military base to "caretaker status".

C. Economic

49. Puerto Rico has an industrialized economy with particular characteristics derived from its island geography and close institutional links to the United States. Its estimated per capita gross domestic product for 2007 is $19,600, whereas that of the United States is $46,000.[36] Economic performance is closely tied to the United

[33] *The Puerto Rico Herald*, 4 April 2005.
[34] Associated Press, 11 and 16 January 2003.
[35] *Caribbean Insight*, vol. 26, No. 33 (2003).
[36] www.cia.gov, 18 March 2008.

States business cycle, its tax regime and the level of federal transfers. In 2006, manufacturing accounted for around 42 per cent of gross domestic product, whereas agriculture contributed less than 1 per cent. There is a large high-technology manufacturing sector, which has sizeable operations in pharmaceutical, electronics and scientific and precision instruments.[37]

50. Industrialization in Puerto Rico was encouraged by the Industrial Incentive Act of 1954, which granted concessions to United States companies that located plants on the island. In particular, section 936 of the United States Federal Tax Code provided generous tax incentives to such companies, including the right to tax-free repatriation of profits. Through the years, these policies helped to make Puerto Rico an "offshore manufacturing outpost"[38] of the United States, transforming the economy from a sugar-dominated Caribbean plantation economy to a modern industrialized one. In 1996, however, Congress adopted legislation that began phasing out these tax incentives as part of its budget reconciliation and abolished them entirely on 31 December 2005.[39]

51. Thus, a major challenge for Puerto Rico's economic policy over the past several years has been to prepare the economy for the effects of the phase-out of section 936 tax exemptions by reducing the island's dependence on manufacturing and promoting the development of the high-technology and tourism sectors. Meanwhile, some international firms, especially the pharmaceutical and medical-device companies, have found a way to mitigate the negative effects of the abolition of section 936. By acquiring a "controlled foreign corporation" status, companies may utilize section 901 of the tax code, which imposes federal taxes on profits only when they are transferred back to the 50 States.

52. Meanwhile, the agricultural sector in Puerto Rico is small and declining. In 2006 it accounted for 0.4 per cent of GDP, down from 1.4 per cent in 1990. Employment in the sector has also decreased, with 26,000 (2.1 per cent of the workforce) employed in 2006 compared to 35,000 in 1990.

53. Although Puerto Rico's five-year construction boom came to a close with the economic slowdown in 2001, its residential construction sector remained dynamic because of a steady rise in the number of households. Puerto Rico has a high rate of home ownership, with nearly three quarters of households owning their homes. However, the construction sector could be affected for some time to come by the ongoing general correction in the residential housing market. Since 2001, public-sector non-housing activity has accounted for well over half of industrial and commercial construction activity.

54. In 2003, the Government of Puerto Rico announced a programme of investment in infrastructure and public works intended to stimulate the economy (part of a total $6 billion investment package over four years), which included the construction of a new megaport under the Port of the Americas Authority, for which the Government of Puerto Rico has committed a total of $250 million. Total investment is estimated at $750 million, and it is hoped that the port project will create approximately 12,000 direct and indirect jobs in a 10-year period. The first of four phases of the project, the construction of Piers 4, 5 and 6, was successfully

[37] *Economist Intelligence Unit*, Country Profile 2007, Puerto Rico, March 2008.
[38] Ibid., Puerto Rico Country Profile, 2005.
[39] *Journal of Commerce*, 23 January 2006.

completed in November 2004, two months ahead of schedule and at a cost of $40 million.[40] In March 2005, the Government Development Bank approved the release of funds for phase two of the project, which is expected to cost $70 million and take until 2009 to complete. It is envisaged that this phase will be inaugurated by the second quarter of 2008.[41]

55. Tourism in Puerto Rico has grown steadily over the past five years. In March 2007, media reports stated that Puerto Rico received 5.6 million tourists during fiscal year 2006, an increase of 3.4 per cent from 2005.[42] The sector also is a significant source of employment, with around 20,000 people working in the hotel industry. Moreover, it is estimated that for every 100 hotel jobs, there are an additional 178 jobs in related activities. These figures indicate that around 4.5 per cent of the workforce is employed in the sector.[37]

56. Upon taking office in January 2005, Governor Acevedo Vilá, faced with a large budget deficit, made stabilizing public finances a priority and submitted a "transition" budget for the fiscal year 2005/2006 designed to halt the deterioration of Government finances. However, the Legislature refused to approve the budget proposals, preventing sufficient revenue being raised to cover expenditures. On 1 May 2006, Puerto Rico faced a cash flow crisis which, in the first-ever partial shutdown of the Government in the island's history, closed down 43 Government agencies laying off around 95,000 workers, and forced the closure of all 1,536 public schools. The fiscal crisis was resolved when an agreement was reached on a new tax reform on 10 May, just one day ahead of a series of union-sponsored protests intended to disrupt the island's economy and the same day that Moody's Investors Service downgraded some of Puerto Rico's bonds to junk status as a result of the crisis.[43] On 5 July 2006, the media reported that Puerto Rico's Governor signed a bill on 4 July creating the island's first sales tax of up to 7 per cent, a rate that legislators consider too high.[44] Puerto Rico's 2007/2008 budget, approved in June 2007, saw a further cut in spending, reflecting the continuing need for fiscal discipline.[37]

57. The most exhaustive study of the Puerto Rican economy done in the past 75 years, entitled "Economy of Puerto Rico: restoring growth",[45] was jointly conducted by the Center for the New Economy in San Juan and the Brookings Institution in Washington, D.C., in 2005. It examined the island's economic performance from its post-second World War boom through its stagnation in the past 25 years, including the island's low employment rates, comparatively small private sector, trade performance, and the effectiveness of its educational, financial and fiscal systems. The study concluded that reviving growth would require increasing the proportion of Puerto Ricans who are working, both through enhancing incentives to seek employment and through expanding private sector job opportunities.[46]

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[40] www.portoftheamericas.com.

[41] *The Puerto Rico Herald*, 4 March 2005; www.portoftheamericas.com.

[42] Associated Press, 13 March 2007.

[43] www.nytimes.com, 9 May 2006.

[44] www.herald.com, 5 July 2006.

[45] S. M. Collins, B. P. Bosworth and M. A. Soto-Class, editors, *The Economy of Puerto Rico: Restoring Growth*, Brookings Institution Press, Washington, D.C., and Center for the New Economy, San Juan, 2006.

[46] www.usanewswire.com, 25 May 2006.

58. On 20 February 2008, the Puerto Rico Chamber of Commerce organized a conference entitled "Investment for Growth", convening investors from the United States and abroad to learn about the investment atmosphere and opportunities in Puerto Rico. The Chairman of the Conference explained that the event was taking place in the context of Puerto Rico's desire "to maintain a strong economy based principally on manufacturing, such as the one we have, yet promote the development and growth of the economy in other sectors, such as services, finance, insurance and the development of technology and knowledge". All the main Government agencies representing the economic sectors also participated. With the goal of boosting Puerto Rico's economy, the event aimed to encourage outside investors to take a closer look at the various investment opportunities available throughout the island, including in the areas of finance, real estate, biotechnology, insurance, retail, communications, tourism, and health care.[47]

IV. Previous action taken by the United Nations

A. General

59. Since 1953, the United States has maintained a consistent position regarding the status of Puerto Rico and the competence of United Nations organs to examine that status, based on General Assembly resolution 748 (VIII) of 27 November 1953, by which the Assembly released the United States from its obligations under Chapter XI of the Charter of the United Nations. In paragraph 9 of the resolution, the General Assembly expressed its assurance that, in accordance with the spirit of the resolution, the ideals embodied in the Charter of the United Nations, the traditions of the people of the United States and the political advancement attained by the people of Puerto Rico, due regard would be paid to the will of both the Puerto Rican and American peoples in the conduct of their relations under their legal stature, and also in the eventuality that either of the parties to the mutually agreed association might desire any change in the terms of that association. Since then, the United States has maintained that Puerto Rico has exercised its right to self-determination, has attained a full measure of self-government, has decided freely and democratically to enter into a free association with the United States and is, therefore, as stated explicitly in resolution 748 (VIII), beyond the purview of United Nations consideration. The Puerto Rican forces in favour of decolonization and independence have contested this affirmation.

60. Information on action taken by United Nations bodies with respect to Puerto Rico prior to 1974 is contained in the 1973 report of the Rapporteur (A/AC.109/L.976). Information since then can be found as follows: A/AC.109/L.1191 and Add.1 (for 1974 to 1976); A/AC.109/L.1334 and Add.1-3 (for 1977 and 1978); A/AC.109/L.1436 (for 1979 to 1981); A/AC.109/L.1572 (for 1981 to 1985); A/AC.109/1999/L.13 (for 1984 to 1998); A/AC.109/2000/L.3 (for 1999); A/AC.109/2001/L.3 (for 2000); A/AC.109/2002/L.4 (for 2001); A/AC.109/2003/L.3 (for 2002); A/AC.109/2004/L.3 (for 2003); and A/AC.109/2005/L.3 (for 2004) and A/AC.109/2006/L.3 (for 2005), A/AC.109/2007/L.3 (for 2006).

[47] www.prwow.com, accessed on 20 March 2008.

B. Action taken by the Special Committee

61. At its 1st meeting, on 22 February 2007, by adopting the suggestions relating to the organization of work put forward by the Chairman (see A/AC.109/2007/L.2), the Special Committee decided to take up as appropriate the item entitled "Special Committee decision of 12 June 2006 concerning Puerto Rico" and to consider it at plenary meetings.

62. Also at the 3rd and 4th meetings, on 5 and 14 June 2007, the Chairman of the Special Committee drew attention to a number of communications received from organizations requesting to be heard on Puerto Rico by the Committee. At the same meetings, the Special Committee agreed to accede to those requests and heard a number of representatives of the organizations concerned at its 5th and 6th meetings (see A/AC.109/2007/SR.5 and 6).

63. At the 5th meeting, on 14 June, the representative of Cuba, also on behalf of the Bolivarian Republic of Venezuela, introduced draft resolution A/AC.109/2007/L.7.

64. At the 6th meeting, on 14 June, following statements by the representatives of Saint Lucia (on behalf of the Movement of Non-Aligned Countries), the Bolivarian Republic of Venezuela, the Syrian Arab Republic and the Islamic Republic of Iran, the Special Committee adopted draft resolution A/AC.109/2007/L.7 without a vote. At the same meeting, statements were made by the representatives of Cuba and Nicaragua.

C. Action taken by the General Assembly

65. During the sixty-second session of the General Assembly, no draft resolution on this issue was submitted to the Assembly for action.